
DRAFT STATUTORY INSTRUMENTS

2006 No.

The Employment Equality (Age) Regulations 2006

PART 4

GENERAL EXCEPTIONS FROM PARTS 2 AND 3

Exception for statutory authority

27.—(1) Nothing in Part 2 or 3 shall render unlawful any act done in order to comply with a requirement of any statutory provision.

(2) In this regulation “statutory provision” means any provision (whenever enacted) of—

- (a) an Act or an Act of the Scottish Parliament;
- (b) an instrument made by a Minister of the Crown under an Act;
- (c) an instrument made under an Act or an Act of the Scottish Parliament by the Scottish Ministers or a member of the Scottish Executive.

Exception for national security

28. Nothing in Part 2 or 3 shall render unlawful an act done for the purpose of safeguarding national security, if the doing of the act was justified by that purpose.

Exceptions for positive action

29.—(1) Nothing in Part 2 or 3 shall render unlawful any act done in or in connection with—

- (a) affording persons of a particular age or age group access to facilities for training which would help fit them for particular work; or
- (b) encouraging persons of a particular age or age group to take advantage of opportunities for doing particular work;

where it reasonably appears to the person doing the act that it prevents or compensates for disadvantages linked to age suffered by persons of that age or age group doing that work or likely to take up that work.

(2) Nothing in Part 2 or 3 shall render unlawful any act done by a trade organisation within the meaning of regulation 18 in or in connection with—

- (a) affording only members of the organisation who are of a particular age or age group access to facilities for training which would help fit them for holding a post of any kind in the organisation; or
- (b) encouraging only members of the organisation who are of a particular age or age group to take advantage of opportunities for holding such posts in the organisation,

where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to age suffered by those of that age or age group holding such posts or likely to hold such posts.

(3) Nothing in Part 2 or 3 shall render unlawful any act done by a trade organisation within the meaning of regulation 18 in or in connection with encouraging only persons of a particular age or age group to become members of the organisation where it reasonably appears to the organisation that the act prevents or compensates for disadvantages linked to age suffered by persons of that age or age group who are, or are eligible to become, members.

Exception for retirement

30.—(1) This regulation applies in relation to an employee within the meaning of section 230(1) of the 1996 Act, a person in Crown employment, a relevant member of the House of Commons staff, and a relevant member of the House of Lords staff.

(2) Nothing in Part 2 or 3 shall render unlawful the dismissal of a person to whom this regulation applies at or over the age of 65 where the reason for the dismissal is retirement.

(3) For the purposes of this regulation, whether or not the reason for a dismissal is retirement shall be determined in accordance with sections 98ZA to 98ZF of the 1996 Act⁽¹⁾.

Exception for the national minimum wage

31.—(1) Nothing in Part 2 or 3 shall render it unlawful for a relevant person (“A”) to be remunerated in respect of his work at a rate which is lower than the rate at which another such person (“B”) is remunerated for his work where—

- (a) the hourly rate of the national minimum wage for a person of A’s age is lower than that for a person of B’s age, and
- (b) the rate at which A is remunerated is below the single hourly rate for the national minimum wage prescribed by the Secretary of State under section 1(3) of the National Minimum Wage Act 1998⁽²⁾.

(2) Nothing in Part 2 or 3 shall render it unlawful for an apprentice who is not a relevant person to be remunerated in respect of his work at a rate which is lower than the rate at which an apprentice who is a relevant person is remunerated for his work.

(3) In this regulation—

“apprentice” means a person who is employed under a contract of apprenticeship or, in accordance with regulation 12(3) of the National Minimum Wage Regulations 1999⁽³⁾, is to be treated as employed under such a contract;

“relevant person” means a person who qualifies for the national minimum wage⁽⁴⁾ (whether at the single hourly rate for the national minimum wage prescribed by the Secretary of State under section 1(3) of the National Minimum Wage Act 1998 or at a different rate).

Exception for provision of certain benefits based on length of service

32.—(1) Subject to paragraph (2), nothing in Part 2 or 3 shall render it unlawful for a person (“A”), in relation to the award of any benefit by him, to put a worker (“B”) at a disadvantage when compared with another worker (“C”), if and to the extent that the disadvantage suffered by B is because B’s length of service is less than that of C.

(1) Employment Rights Act 1996 (c. 18); sections 98ZA to 98ZF are inserted by paragraph 23 of Schedule 8 to these Regulations.

(2) 1998 c. 39. The hourly rate is prescribed in regulation 11 of the National Minimum Wage Regulations 1999 (S.I. 1999/584) and that rate has most recently been amended by regulation 2 of the National Minimum Wage Regulations 1999 (Amendment) Regulations 2005 (S.I. 2005/2019).

(3) S.I. 1999/584, to which relevant amendments have been made by S.I. 2000/1989 and S.I. 2004/1930.

(4) A person qualifies for the national minimum wage if he is a person who – (a) is a worker; (b) is working, or ordinarily works, in the UK under a contract; and (c) has ceased to be of compulsory school age: see s.1(2) of the National Minimum Wage Act 1998.

(2) Where B's length of service exceeds 5 years, it must reasonably appear to A that the way in which he uses the criterion of length of service, in relation to the award in respect of which B is put at a disadvantage, fulfils a business need of his undertaking (for example, by encouraging the loyalty or motivation, or rewarding the experience, of some or all of his workers).

(3) In calculating a worker's length of service for these purposes, A shall calculate—

- (a) the length of time the worker has been working for him doing work which he reasonably considers to be at or above a particular level (assessed by reference to the demands made on the worker, for example, in terms of effort, skills and decision making); or
- (b) the length of time the worker has been working for him in total;

and on each occasion on which he decides to use the criterion of length of service in relation to the award of a benefit to workers, it is for him to decide which of these definitions to use to calculate their lengths of service.

(4) For the purposes of paragraph (3), in calculating the length of time a worker has been working for him—

- (a) A shall calculate the length of time in terms of the number of weeks during the whole or part of which the worker was working for him;
- (b) A may discount any period during which the worker was absent from work (including any period of absence which at the time it occurred was thought by A or the worker to be permanent) unless in all the circumstances (including the way in which other workers' absences occurring in similar circumstances are treated by A in calculating their lengths of service) it would not be reasonable for him to do so;
- (c) A may discount any period of time during which the worker was present at work ("the relevant period") where—
 - (i) the relevant period preceded a period during which the worker was absent from work, and
 - (ii) in all the circumstances (including the length of the worker's absence, the reason for his absence, the effect his absence has had on his ability to discharge the duties of his work, and the way in which other workers are treated by A in similar circumstances) it is reasonable for A to discount the relevant period.

(5) For the purposes of paragraph (3)(b), a worker shall be treated as having worked for A during any period during which he worked for another if—

- (a) that period is treated as a period of employment with A for the purposes of the 1996 Act by virtue of the operation of section 218 of that Act; or
- (b) were the worker to be made redundant by A, that period and the period he has worked for A would amount to "relevant service" within the meaning of section 155 of that Act.

(6) In paragraph (5)—

- (a) the reference to being made redundant is a reference to being dismissed by reason of redundancy for the purposes of the 1996 Act;
- (b) the reference to section 155 of that Act is a reference to that section as modified by the Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999(5).

(7) In this regulation—

- "benefit" does not include any benefit awarded to a worker by virtue of his ceasing to work for A; and
- "year" means a year of 12 calendar months.

Exception for provision of enhanced redundancy payments to employees

- 33.—(1) Nothing in Part 2 or 3 shall render it unlawful for an employer—
- (a) to give a qualifying employee an enhanced redundancy payment which is less in amount than the enhanced redundancy payment which he gives to another such employee if both amounts are calculated in the same way;
 - (b) to give enhanced redundancy payments only to those who are qualifying employees by virtue of sub-paragraph (a) or (c)(i) of the definition of qualifying employee below.
- (2) In this regulation—
- “the appropriate amount”, “a redundancy payment” and “a week’s pay” have the same meaning as they have in section 162 of the 1996 Act⁽⁶⁾;
- “enhanced redundancy payment” means a payment of an amount calculated in accordance with paragraph (3) or (4);
- “qualifying employee” means—
- (a) an employee who is entitled to a redundancy payment by virtue of section 135 of the 1996 Act;
 - (b) an employee who would have been so entitled but for the operation of section 155 of that Act;
 - (c) an employee who agrees to the termination of his employment in circumstances where, had he been dismissed—
 - (i) he would have been a qualifying employee by virtue of sub-paragraph (a) of this definition; or
 - (ii) he would have been a qualifying employee by virtue of sub-paragraph (b).
- (3) For an amount to be calculated in accordance with this paragraph it must be calculated in accordance with section 162(1) to (3) of the 1996 Act.
- (4) For an amount to be calculated in accordance with this paragraph—
- (a) it must be calculated as in paragraph (3);
 - (b) however, in making that calculation, the employer may do one or both of the following things—
 - (i) he may treat a week’s pay as not being subject to a maximum amount or as being subject to a maximum amount above the amount laid down in section 227 of the 1996 Act⁽⁷⁾;
 - (ii) he may multiply the appropriate amount allowed for each year of employment by a figure of more than one;
 - (c) having made the calculation as in paragraph (3) (whether or not in making that calculation he has done anything mentioned in sub-paragraph (b)) the employer may increase the amount thus calculated by multiplying it by a figure of more than one.
- (5) For the purposes of paragraphs (3) and (4), the reference to “the relevant date” in section 162(1)(a) of the 1996 Act is to be read, in the case of a qualifying employee who agrees to the termination of his employment, as a reference to the date on which that termination takes effect.

(6) Subsections (4), (5) and (8) of section 162 of the 1996 Act have been repealed by regulation 49 of, and paragraph 32 of Schedule 8 to, these Regulations. Subsection (6) was amended by the Employment Rights (Dispute Resolution) Act 1998 (c. 8), section 1(2)(a). Subsection (7) was repealed by the Employment Relations Act 1999 (c. 26), sections 9 and 44 and Schedule 4, Part 3, paragraphs 5 and 30.

(7) The amount laid down in section 227 may be increased or decreased by Order made by the Secretary of State under section 34 of the Employment Relations Act 1999. The amount laid down in section 227 is currently £290; see [S.I. 2005/3352](#).

Exception for provision of life assurance cover to retired workers

34.—(1) Where a person (“A”) arranges for workers to be provided with life assurance cover after their early retirement on grounds of ill health, nothing in Part 2 or 3 shall render it unlawful—

- (a) where a normal retirement age applied in relation to any such workers at the time they took early retirement, for A to arrange for such cover to cease when such workers reach that age;
- (b) in relation to any other workers, for A to arrange for such cover to cease when the workers reach the age of 65.

(2) In this regulation, “normal retirement age”, in relation to a worker who has taken early retirement, means the age at which workers in A’s undertaking who held the same kind of position as the worker held at the time of his retirement were normally required to retire.